

**COMMONWEALTH OF KENTUCKY
KENTUCKY BOARD OF TAX APPEALS
FILE NO. K03-S-6**

CHARLES WELSH

APPELLANT

V.

ORDER K-19135

**FAYETTE COUNTY PROPERTY
VALUATION ADMINISTRATOR**

APPELLEE

* * * * *

The Kentucky Board of Tax Appeals has delegated authority to attorney Robert G. Layton to act as a hearing officer pursuant to KRS 13B.030. The hearing officer entered a recommended order in compliance with the provisions of KRS 13B.110. No exceptions or objections to the recommended order were filed. The Board has reviewed the record and the recommended order. The recommended order states:

The Kentucky Board of Tax Appeals has delegated authority to staff attorney Robert Layton to act as a hearing officer pursuant to KRS 13B.030. The hearing officer has considered the evidence of record in this case submitted at a hearing, and the transcript filed October 30, 2003, and makes the following findings of fact, conclusions of law and recommended disposition.

FINDINGS OF FACT

This assessment appeal is for real property owned by Charles Welsh located at 558 East High Street, Lexington, Fayette County, Kentucky. The Fayette County Board of Assessment Appeals affirmed the Fayette Property Valuation Administrator's

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\$110,000 assessment. Welsh filed a timely appeal from the local board with the Kentucky Board of Tax Appeals, contending the value is \$71,200.

The property is a residential duplex rental building near the University of Kentucky. Welsh receives \$1,500 per month in gross rental income, and insures the building's value (not including the value of the lot) for \$120,000. *Transcript, p. 6.*

Excluding interest on the mortgage and tax expenses, Welsh's net income for the property was \$13,561 per year. *Exhibit 1.*

Shawn Thompson, residential assessor for the Fayette County Property Valuation Administrator, testified for the Appellee. According to Thompson, interest on a mortgage is not an appropriate item to include as an expense in the income approach to valuing property, because the mortgage expense is already reflected in the capitalization rate for the property. Thompson also testified that he was familiar with rental properties in the U.K. area such as the subject property, and that based on his familiarity, an 11 % capitalization rate is appropriate for the subject property. Such a capitalization rate includes a component for the tax rate, and Thompson testified it would therefore be inappropriate using taxes twice to also include the taxes as an expense item.

Applying the income approach with an 11 % capitalization rate to the amended net annual income of \$13,561 results in a value for the subject property of \$123,281.

Thompson also analyzed the property using the comparable sales, and introduced three nearby comparable duplex sales. *Exhibit 2.* Applying equal weight to the

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comparable sales and the income approach, Thompson testified the fair market value of the property as of January 1, 2003 is \$120,000. *Transcript, p. 14-15.*

After Thompson testified, the hearing officer pointed out to Mr. Welsh that the evidence at the hearing tended to support a value of \$120,000, which would be higher than the value established by the decision of the Fayette County Property Valuation Administrator and the Fayette County Board of Assessment Appeals. Mr. Welsh was offered an opportunity to withdraw his appeal, which would mean the value would remain at the \$110,000 set by the local board. Mr. Welsh chose to not withdraw his appeal. *Transcript, p. 17-18.*

The hearing officer finds the comparable sales approach and the income approach are both appropriate for use in valuing the subject property, and finds the fair cash value as of January 1, 2003 is \$120,000.

CONCLUSIONS OF LAW

The Kentucky Board of Tax Appeals is vested with exclusive jurisdiction to hear and determine appeals from final rulings, orders and determinations of the Fayette County BAA pursuant to KRS 131.340(1).

The function of the Board is not simply to review the action of the Fayette County BAA, but to try anew the issues as presented. *Jefferson County Property Valuation Administrator v. Oxford Properties, Inc.*, Ky.App., 726 S.W.2d 317, 319 (1987). See KRS 131.340(1).

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Section 172 of the Kentucky Constitution mandates that "all property shall be assessed for taxation at its fair cash value, estimated at the price it would bring at a fair voluntary sale."

The choice of the most appropriate and reliable approach to valuation is within the prerogative of the Board. *Jefferson County Property Valuation Administrator*, 726 S.W.2d at 319.

Regardless of the manner or method used by the Property Valuation Administrator or the decision of the Kentucky Board of Tax Appeals, the finding of valuation must be at its fair cash value, estimated at the price it would bring at a fair voluntary sale. *Helman v. Kentucky Board of Tax Appeals*, Ky.App., 554 S.W.2d 889(1977).

The hearing officer finds the fair cash value of the subject property as of January 1, 2003 is \$120,000.

RECOMMENDED ORDER

The hearing officer recommends the June 16, 2003 final ruling of the Fayette County BAA be **reversed**, and recommends the real property be assessed at a fair cash value of \$120,000 as of January 1, 2003.

This is a recommended order, and each party shall have fifteen (15) days from the date this recommended order is mailed to file exceptions to the recommendations with the Kentucky Board of Tax Appeals. Failure to file exceptions to the recommended order

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may result in a party being unable to seek judicial review on appeal. This recommended order has been sent by first class mail on the date below to the last known address of the parties.

ORDER

The Kentucky Board of Tax Appeals has considered the record, and accepts the recommended order of the hearing officer, and adopts it as the Board's final order. Failure to file exceptions to an administrative hearing officer's recommendations after a hearing constitutes a failure to exhaust administrative remedies and precludes appellate review. *Swatzell v. Natural Resources and Environmental Protection Cabinet*, Ky App 962 SW 2d 866 (1998). The following information is provided pursuant to the final order requirements of KRS Chapter 13B:

This is a final and appealable order which may be appealed to the Circuit Court of the county in which the appeal originated by filing a petition of appeal in the appropriate Circuit Court within thirty (30) days after this final order is mailed or delivered by personal service, pursuant to KRS 13B.140(1) and KRS 131.370(1). Copies of the petition of appeal shall be served by the Petitioner upon the Kentucky Board of Tax Appeals and all parties of record. The petition of appeal shall include the names and addresses of all parties to the proceedings and the Kentucky Board of Tax Appeals, and a statement of the grounds on which the review is requested. The petition of appeal shall be accompanied by a copy of this final order. Within twenty (20) days after service of the petition of appeal, or within further time allowed by the Circuit Court, the Kentucky

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Board of Tax Appeals shall transmit to the reviewing court the original or a certified copy of the official record of the proceeding under review in compliance with KRS 13B.140(3).

**DATE OF ORDER
AND MAILING:
March 23, 2004**

FULL BOARD CONCURRING.

GEORGE H. HELTON
CHAIRMAN

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